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13 PYRO SPECTACULARS, INC.

14
15 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**
16 **OF THE STATE OF CALIFORNIA**

17 IN THE MATTER OF PERCHLORATE)
18 CONTAMINATION AT A 160-ACRE)
SITE IN THE RIALTO AREA)

SWRCB/OCC FILE A-1824

**NOTICE OF ERRATA TO PYRO
SPECTACULARS, INC.'S ("PSI")
REBUTTAL BRIEF**

Date: July 9-12, 2007
July 18-19, 2007

Location: San Bernardino County
Auditorium
850 East Foothill Blvd.
Rialto, CA

24
25 TO ALL PARTIES, THEIR REPRESENTATIVES AND ATTORNEYS OF RECORD IN THIS
26 ACTION:


27 PLEASE TAKE NOTICE that inadvertent typographical errors were discovered in
28 Pyro Spectacular Inc.'s ("PSI") Rebuttal Brief at page 2, lines 1 and 4. At page 2, line 1, it

1 reads, "Acre Property, with than 400 feet of soil between it and the groundwater." It should
2 read, "Acre Property, with more than 400 feet of soil between it and the groundwater." At
3 page 2, line 4, it reads, "The facts do prove PSI liable under Water Code." It should read,
4 "The facts do not prove PSI liable under Water Code."

5 A corrected page 2 to PSI's Rebuttal Brief is attached.

6
7 DATED: June 12, 2007

RESOLUTION LAW GROUP, P.C.

8
9 By: 
10 Philip C. Hunsucker
11 Brian L. Zagon
12 Erik S. Mroz
13 Attorneys for Designated Party
14 Pyro Spectaculars, Inc.

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1 Acre Property, with more than 400 feet of soil between it and the groundwater. Rialto's and
2 the Advocacy Team's arguments leave their case on the surface, but Water Code Section
3 13304 requires facts that prove a discharge of perchlorate is actually in the groundwater or at
4 a depth that is a threat to groundwater. The facts do not prove PSI liable under Water Code
5 Section 13304.

6 Even Dr. Stephens does not set forth in his April 12, 2007 declaration that perchlorate
7 from PSI is in the groundwater or is a threat to groundwater. Groundwater is more than 400
8 feet below ground surface at the 160-Acre Property. (Advocacy Team Submission of March
9 27, 2007 ("Advocacy Team Submission"), p. 5;² Declaration of Daniel B. Stephens submitted
10 by Rialto on April 12, 2007 ("Stephens Decl."), p. 13.) As part of a "Final Calculation" that he
11 used in his "Declaration" submitted on April 12, 2007, Dr. Stephens estimated that perchlorate
12 on the surface at the 160-Acre Property would be expected to move toward groundwater at an
13 average rate of 1.25 feet per year (15 inches per year), absent a source of water other than
14 rainfall to mobilize the perchlorate. (Stephens Decl., pp. 14 and 16; Exhibit P 164.) Applying
15 Dr. Stephens' "Final Calculation," it would take 320 years for perchlorate to reach groundwater
16 from ground surface at the 160-Acre Property (**400 feet ÷ 1.25 feet/year = 320 years**).
17 (Stephens Depo., Vol. 3., May 16, 2007, 766:20-767:4.)³ Any minimal amount of perchlorate
18 remaining on the ground at the 160-Acre Property (or elsewhere in the Rialto-Colton Basin)
19 does not meet the definition of "threaten" in Water Code Section 13304(e) because that
20 section requires a "condition creating a substantial probability of harm, when the probability
21 and potential extent of harm make it reasonably necessary to take immediate action to prevent,
22 reduce, or mitigate damages to persons, property, or natural resources." No evidence exists
23 that perchlorate from PSI's operations is within a hundred feet of groundwater. (Holub Depo.,


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25 ²According to the Advocacy Team Submission: "In dry weather years, the
26 unsaturated zone in the vicinity of the Property extends to a depth of over 450 feet below
27 the ground surface (bgs)." (Advocacy Team Submission, p. 5.) According to the Stephens
28 Declaration: "The approximate historical thickness of the vadose zone was estimated to
have ranged . . . to as much as about 465 feet bgs during the drought years (e.g., 1999
through 2004) . . ." (Stephens Decl., p. 13.)

³USGS studies of the Rialto-Colton Basin result in a vadose zone transport speed of
.15 inches per year, far slower than Dr. Stephens' calculation.

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3 Environmental Justice
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6

7 I declare that I am employed in the office of a member of the bar of the State of
8 California. I declare under penalty of perjury under the laws of the State of California that
9 the foregoing is true and correct.

10 Executed on **June 12, 2007** at Lafayette, California.

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13 Marie Montoya
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